Supreme Court, U.S.
FILED
APR 5 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1725

In The

Supreme Court of the United States

October Term, 1987

ONE LEAR JET AIRCRAFT, SERIAL NO. 35A-280, REGISTRATION NO. YN-BVO, and LEYBDA CORPORATION, S.A.,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH AND ELEVENTH CIRCUITS

PETITIONER'S RESPONSE TO THE SUPPLEMENTAL MEMORANDUM OF THE UNITED STATES

Counsel:

BRUCE J. WINICK, ESQ.
University of Miami
School of Law
P.O. Box 8087
Coral Gables, FL 33124
(305) 284-3031

Counsel of Record:

IRA J. KURZBAN, ESQ.
Counsel for Claimant/ Defendant
Kurzban Kurzban & Weinger P.A.
2650 SW 27th Ave., 2nd Floor
Miami, FL 33133
(305) 444-0060

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

No. 86-1725

In The

Supreme Court of the United States

October Term, 1987

ONE LEAR JET AIRCRAFT, SERIAL NO. 35A-280, REGISTRATION NO. YN-BVO, and LEYBDA CORPORATION, S.A.,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH AND ELEVENTH CIRCUITS

PETITIONER'S RESPONSE TO THE SUPPLEMENTAL MEMORANDUM OF THE UNITED STATES

1. On April 24, 1987, following the decision of the Court of Appeals for the Eleventh Circuit rejecting the merits of Petitioner's appeal in this forfeiture case, Petitioner Leybda Corporation filed a Petition for Certiorari seeking review of the court of appeals' decision on significant issues of forfeiture law that relate closely to the

issues under consideration in *Kungys v. United States*, No. 86-228. Petitioner sought review of the forfeiture of its $3.2 million Lear jet based solely upon alleged misrepresentations made by crew members of the aircraft in applications for temporary visas at a United States Embassy abroad. In July, 1987, the United States filed a Brief agreeing that the Petition "should be held pending the decision in *Kungys v. United States*, No. 86-228, and disposed of in light of the decision in that case." *Brief for the United States*, p.7. It did not object to the jurisdiction of this Court or the court of appeals to hear Petitioner's claims.

2. On October 2, 1987, the Court of Appeals for the Eleventh Circuit *sua sponte* granted rehearing *en banc* thereby vacating the panel opinion that is the subject of the April 24, 1987 Petition for Certiorari. On February 11, 1988, the *en banc* court found it lacked jurisdiction over the forfeiture appeal because the government had removed the *res* from the district. On February 24, 1988, Petitioner filed a motion for reconsideration of the *en banc* decision in the Eleventh Circuit and by letter notified the Clerk of this Court and the Office of the Solicitor General that it would shortly be filing a Supplement to the initial Petition for Certiorari, and requesting that the Court withhold decision on the initial Petition pending consideration of the Supplemental Petition. On March 17, 1988, Petitioner filed its Supplement to Petition for Writ of Certiorari requesting that this Court grant certiorari on the significant jurisdictional issues presented, and thereafter consider the significant forfeiture law issues raised in the initial Petition. On the same date, the United States filed its Supplemental Memorandum for the United

States in Opposition, which, without referring to the Petitioner's Supplemental Petition, urged that the Petition be denied on the basis that the initial Petition addresses only the panel's ruling, since vacated, on the forfeiture law issue.

3. On March 24, 1988, in an abundance of caution, Petitioner filed a Petition for Writ of Certiorari from the jurisdictional determination of the court of appeals, raising in substantially identical terms the issues set forth in its Supplemental Petition.

4. Notwithstanding the Solicitor's claim, this Court continues to have jurisdiction to consider the April 24, 1987 Petition for Certiorari, as supplemented by the Supplemental Petition for Certiorari filed on March 17, 1988. *See Mercer v. Theriot,* 377 U.S. 152, 153-154 (1964). The Court should grant certiorari to consider the significant jurisdictional questions raised in the Supplemental Petition, and should then consider the significant forfeiture law issues raised in the April 24, 1987 Petition. In the alternative, this Court has jurisdiction to consider the March 24, 1988 Petition for Certiorari. The issues raised in the Supplemental Petition and March 24, 1988 Petition, never addressed by the United States in its Supplemental Memorandum, are significant ones which themselves merit certiorari. This Court should grant certiorari to consider them, and if they are resolved as Petitioner urges, should thereafter either consider the merits of the significant forfeiture law issues in the initial petition, see

Mercer, supra, or remand them for reconsideration by the court of appeals.

Respectfully submitted,

KURZBAN KURZBAN AND WEINGER, P.A.
2650 SW 27th Avenue, 2nd Floor
Miami, Florida 33133
(305) 444-0060

By: /s/ IRA J. KURZBAN, ESQ.
BRUCE J. WINICK
University of Miami School of Law
P.O. Box 8087
Coral Gables, Florida 33124
(305) 284-3031